

Senate Bill No. 1082

CHAPTER 154

An act to amend Sections 3651, 3653, and 17560 of, and to add Sections 3047 and 17440 to, the Family Code, relating to child support, and declaring the urgency thereof to take effect immediately.

[Approved by Governor August 30, 2005. Filed with
Secretary of State August 30, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1082, Morrow. Child support: military reservists.

(1) Existing law sets forth provisions by which a support order may be revised by the court and specifies that a support order may not be modified or terminated as to an amount that accrued before filing of a motion or an order to show cause to modify, except as specified.

This bill would create an additional exception to this rule to permit service members, activated to United States military duty or National Guard service and deployed out of state, to request modification of a support order, as specified. The bill would require the service member to indicate the date of deployment and would require the court, if possible, to schedule a hearing on the matter prior to that date, or grant a stay of the motion or order to show cause for modification consistent with certain federal timelines for stays. This bill would impose additional requirements on a court that fails to grant a discretionary stay and would provide that a service member, who does not file a notice of activation of military service and request to modify a support order prior to deployment out of state, is not subject to penalties on the amount of child support that would not have accrued if the order had been modified, as specified. The bill would also require the Judicial Council to develop any forms and procedures necessary to implement those provisions.

The bill would also provide that a party's absence, relocation, or failure to comply with custody and visitation orders is not, by itself, sufficient to justify a modification of a custody or visitation order if the reason for the absence, relocation, or failure is the party's activation to military service and deployment out of state.

(2) Existing law permits an order modifying or terminating a support order to be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate, or to any subsequent date, except as specified.

This bill would provide that if an order modifying or terminating a support order is entered due to a change in income resulting from the activation to military service or National Guard duty and deployment out of state for either the support obligor or support obligee, the order shall be made retroactive in accordance with specified requirements.

The bill would also require the Department of Child Support Services to work with the military and National Guard to ensure that information regarding the ability of service members to have support orders modified based on a change of income is made readily available to those service members. The bill would additionally require that department to develop a form for completion by the service member to allow the local child support agency to proceed with a motion for modification of a support order without the service member being required to appear. By placing new duties on local child support agencies, the bill would impose a state-mandated local program.

(3) Existing law establishes an arrears collection enhancement process pursuant to which the Department of Child Support Services may accept offers in compromise of child support arrears and interest accrued thereon owed to the state for reimbursement of aid paid pursuant to the California Work Opportunity and Responsibility to Kids Act (CalWORKs program).

This bill would provide that the acceptance of an offer in compromise shall be deemed to be in the state's best interest with regard to arrears that accrued as a result of a decrease in income when an obligor was a reservist or member of the National Guard, was activated to military service, and failed to modify the support order to reflect the reduction in income. The bill would also specify that those changes apply to all service members deployed out of state, regardless of whether those members were deployed before or after the effective date of the bill. The bill would also require the director of that department to establish specified rules in accordance with this provision.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(5) The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 3047 is added to the Family Code, to read:

3047. A party's absence, relocation, or failure to comply with custody and visitation orders shall not, by itself, be sufficient to justify a modification of a custody or visitation order if the reason for the absence, relocation, or failure to comply is the party's activation to military service and deployment out of state.

SEC. 2. Section 3651 of the Family Code is amended to read:

3651. (a) Except as provided in subdivisions (c) and (d) and subject to Article 3 (commencing with Section 3680) and Sections 3552, 3587, and

4004, a support order may be modified or terminated at any time as the court determines to be necessary.

(b) Upon the filing of a supplemental complaint pursuant to Section 2330.1, a child support order in the original proceeding may be modified in conformity with the statewide uniform guideline for child support to provide for the support of all of the children of the same parents who were named in the initial and supplemental pleadings, to consolidate arrearages and wage assignments for children of the parties, and to consolidate orders for support.

(c) (1) Except as provided in paragraph (2) and subdivision (b), a support order may not be modified or terminated as to an amount that accrued before the date of the filing of the notice of motion or order to show cause to modify or terminate.

(2) If a party to a support order is activated to United States military duty or National Guard service and deployed out of state, the service member may file and serve a notice of activation of military service and request to modify a support order, in lieu of a notice of motion or order to show cause, by informing the court and the other party of the request to modify the support order based on the change in circumstance. The service member shall indicate the date of deployment, and if possible, the court shall schedule the hearing prior to that date. If the court cannot hear the matter prior to the date of deployment out of state, and the service member complies with the conditions set forth in the Servicemembers Civil Relief Act, Section 522 of the Appendix of Title 50 of the United States Code, the court shall grant a stay of proceedings consistent with the timelines for stays set forth in that section. If, after granting the mandatory stay required by Section 522 of the Appendix of Title 50 of the United States Code, the court fails to grant the discretionary stay described under the law, it shall comply with the federal mandate to appoint counsel to represent the interests of the deployed service member. The court may not proceed with the matter if it does not appoint counsel, unless the service member is represented by other counsel. If the court stays the proceeding until after the return of the service member, the service member shall request the court to set the matter for hearing within 90 days of return from deployment or the matter shall be taken off calendar and the existing order may not be made retroactive pursuant to subdivision (c) of Section 3653.

(3) A service member who does not file a notice of activation of military service and request to modify a support order or order to show cause or notice of motion prior to deployment out of state nonetheless shall not be subject to penalties otherwise authorized by Chapter 5 (commencing with Section 4720) of Part 5 on the amount of child support that would not have accrued if the order had been modified pursuant to paragraph (2), absent a finding by the court of good cause. Any such finding shall be stated on the record.

(4) Notwithstanding any other provision of law, no interest shall accrue on that amount of a child support obligation that would not have become due and owing if the activated service member modified his or her support

order upon activation to reflect the change in income due to the activation. Upon a finding by the court that good cause did not exist for the service member's failure to seek, or delay in seeking, the modification, interest shall accrue as otherwise allowed by law.

(d) An order for spousal support may not be modified or terminated to the extent that a written agreement, or, if there is no written agreement, an oral agreement entered into in open court between the parties, specifically provides that the spousal support is not subject to modification or termination.

(e) This section applies whether or not the support order is based upon an agreement between the parties.

(f) This section is effective only with respect to a property settlement agreement entered into on or after January 1, 1970, and does not affect an agreement entered into before January 1, 1970, as to which Chapter 1308 of the Statutes of 1967 shall apply.

(g) (1) The Judicial Council, no later than 90 days after the effective date of the act adding this section, shall develop any forms and procedures necessary to implement paragraph (2) of subdivision (c). The Judicial Council shall ensure that all forms adopted pursuant to this section are in plain language.

(2) The form developed by the Judicial Council, in addition to other items the Judicial Council determines to be necessary or appropriate, shall include the following:

(A) The date of deployment and all information relevant to the determination of the amount of child support, including whether the service member's employer will supplement the service member's income during the deployment.

(B) A notice informing the opposing party that, absent a finding of good cause, the order will be made retroactive to the date of service of the form or the date of deployment, whichever is later.

(C) Notice that the requesting party must notify the court and the other party upon return from military duty and seek to bring any unresolved request for modification to hearing within 90 days of return, or else lose the right to modify the order pursuant to this section.

SEC. 3. Section 3653 of the Family Code is amended to read:

3653. (a) An order modifying or terminating a support order may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate, or to any subsequent date, except as provided in subdivision (b) or by federal law (42 U.S.C. Sec. 666(a)(9)).

(b) If an order modifying or terminating a support order is entered due to the unemployment of either the support obligor or the support obligee, the order shall be made retroactive to the later of the date of the service on the opposing party of the notice of motion or order to show cause to modify or terminate or the date of unemployment, subject to the notice requirements of federal law (42 U.S.C. Sec. 666(a)(9)), unless the court finds good cause not to make the order retroactive and states its reasons on the record.

(c) If an order modifying or terminating a support order is entered due to a change in income resulting from the activation to United States military service or National Guard duty and deployment out of state for either the support obligor or the support obligee, the order shall be made retroactive to the later of the date of the service on the opposing party of the notice of activation, notice of motion, order to show cause to modify or terminate, or the date of activation, subject to the notice requirements of federal law (42 U.S.C. Sec. 666(a)(9)), unless the court finds good cause not to make the order retroactive and states its reasons on the record. Good cause shall include, but not be limited to, a finding by the court that the delay in seeking the modification was not reasonable under the circumstances faced by the service member.

(d) If an order decreasing or terminating a support order is entered retroactively pursuant to this section, the support obligor may be entitled to, and the support obligee may be ordered to repay, according to the terms specified in the order, any amounts previously paid by the support obligor pursuant to the prior order that are in excess of the amounts due pursuant to the retroactive order. The court may order that the repayment by the support obligee shall be made over any period of time and in any manner, including, but not limited to, by an offset against future support payments or wage assignment, as the court deems just and reasonable. In determining whether to order a repayment, and in establishing the terms of repayment, the court shall consider all of the following factors:

(1) The amount to be repaid.

(2) The duration of the support order prior to modification or termination.

(3) The financial impact on the support obligee of any particular method of repayment such as an offset against future support payments or wage assignment.

(4) Any other facts or circumstances that the court deems relevant.

SEC. 4. Section 17440 is added to the Family Code, to read:

17440. (a) The Department of Child Support Services shall work with all branches of the United States military and the National Guard to ensure that information is made available regarding the rights and abilities of activated service members to have their support orders modified based on a change in income resulting from their activation, or other change of circumstance affecting the child support calculation, or to have a portion of their child support arrearages compromised pursuant to Section 17560.

(b) No later than 90 days after the effective date of this section, the department shall develop a form for completion by the service member that will allow the local child support agency to proceed with a motion for modification without the service member being required to appear. The form shall contain only the information necessary for the local child support agency to proceed with the motion.

(c) Within five business days of receipt of a properly completed form, the local child support agency shall bring a motion to modify the support order. The local child support agency shall bring the motion if the change

in circumstances would result in any change in the dollar amount of the support order.

(d) The department shall work with the United States military to have this form and the form developed pursuant to Section 3651 distributed at all mobilization stations or other appropriate locations to ensure timely notification to all activated personnel of their rights and responsibilities.

SEC. 5. Section 17560 of the Family Code is amended to read:

17560. (a) The department shall create a program establishing an arrears collection enhancement process pursuant to which the department may accept offers in compromise of child support arrears and interest accrued thereon owed to the state for reimbursement of aid paid pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code. The program shall operate uniformly across California and shall take into consideration the needs of the children subject to the child support order and the obligor's ability to pay.

(b) If the obligor owes current child support, the offer in compromise shall require the obligor to be in compliance with the current support order for a set period of time before any arrears and interest accrued thereon may be compromised.

(c) Absent a finding of good cause, any offer in compromise entered into pursuant to this section shall be rescinded, all compromised liabilities shall be reestablished notwithstanding any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise may be refunded, if either of the following occurs:

(1) The department or local child support agency determines that the obligor did any of the following acts regarding the offer in compromise:

(A) Concealed from the department or local child support agency any income, assets, or other property belonging to the obligor or any reasonably anticipated receipt of income, assets, or other property.

(B) Intentionally received, withheld, destroyed, mutilated, or falsified any information, document, or record, or intentionally made any false statement, relating to the financial conditions of the obligor.

(2) The obligor fails to comply with any of the terms and conditions of the offer in compromise.

(d) Pursuant to subdivision (k) of Section 17406, in no event may the administrator, director, or director's designee within the department, accept an offer in compromise of any child support arrears owed directly to the custodial party unless that party consents to the offer in compromise in writing and participates in the agreement. Prior to giving consent, the custodial party shall be provided with a clear written explanation of the rights with respect to child support arrears owed to the custodial party and the compromise thereof.

(e) Subject to the requirements of this section, the director may delegate to the administrator of a local child support agency the authority to compromise an amount of child support arrears that does not exceed five thousand dollars (\$5,000). Only the director or his or her designee may

compromise child support arrears in excess of five thousand dollars (\$5,000).

(f) For an amount to be compromised under this section, the following conditions shall exist:

(1) (A) The administrator, director or director's designee within the department determines that acceptance of an offer in compromise is in the best interest of the state and that the compromise amount equals or exceeds what the state can expect to collect for reimbursement of aid paid pursuant to Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code in the absence of the compromise, based on the obligor's ability to pay.

(B) Acceptance of an offer in compromise shall be deemed to be in the best interest of the state, absent a finding of good cause to the contrary, with regard to arrears that accrued as a result of a decrease in income when an obligor was a reservist or member of the National Guard, was activated to United States military service, and failed to modify the support order to reflect the reduction in income. Good cause to find that the compromise is not in the best interest of the state shall include circumstances in which the service member's failure to seek, or delay in seeking, the modification were not reasonable under the circumstances faced by the service member. The director, no later than 90 days after the effective date of the act adding this subparagraph, shall establish rules that compromise, at a minimum, the amount of support that would not have accrued had the order been modified to reflect the reduced income earned during the period of active military service.

(2) Any other terms and conditions that the director establishes that may include, but may not be limited to, paying current support in a timely manner, making lump sum payments, and paying arrears in exchange for compromise of interest owed.

(3) The obligor shall provide evidence of income and assets, including, but not limited to, wage stubs, tax returns, and bank statements and establish all of the following:

(A) That the amount set forth in the offer in compromise of arrears owed is the most that can be expected to be paid or collected from the obligor's present assets or income.

(B) That the obligor does not have reasonable prospects of acquiring increased income or assets that would enable the obligor to satisfy a greater amount of the child support arrears than the amount offered, within a reasonable period of time.

(C) That the obligor has not withheld payment of child support in anticipation of the offers in compromise program.

(g) A determination by the administrator, director or the director's designee within the department that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of child support arrears shall be final and not subject to the provisions of Chapter 5 (commencing with Section 17800) of Division 17, or subject to judicial review.

(h) Any offer in compromise entered into pursuant to this section shall be filed with the appropriate court. The local child support agency shall notify the court if the compromise is rescinded pursuant to subdivision (c).

(i) Any compromise of child support arrears pursuant to this section shall maximize to the greatest extent possible the state's share of the federal performance incentives paid pursuant to the Child Support Performance and Incentive Act of 1998 and shall comply with federal law.

(j) The department shall ensure uniform application of this section across the state.

(k) The department shall consult with the Franchise Tax Board in the development of the program established pursuant to this section.

(l) The department shall report to the Legislature on the results of the program established pursuant to this section no later than June 30, 2006.

(m) This section shall remain in effect only until January 1, 2007, and as of that date is repealed unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 6. The amendments to Section 17560 of the Family Code made by this act shall apply to all service members deployed out of state, regardless of whether that deployment occurred before or after the effective date of this act.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the parental rights of soldiers and sailors who return from active duty service in Iraq and Afghanistan on or before December 31, 2005, are protected to the same extent as those of soldiers and sailors who return after that date, it is necessary that this act take effect immediately.